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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,057	11/22/2000	Henning Von Spreckelsen	44257.830001	7735
25928 7590 01/29/2009 CHRISTOPHER J. KULISH, ESQ HOLLAND & HART LLP P. O. BOX 8749 DENVER, CO 80201-8749				
EXAMINER				
NEWHOUSE, NATHAN JEFFREY				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HENNING VON SPRECKELSEN
and PETER M. McGEOUGH

Appeal No. 2008-5593
Application No. 09/701,057

Mailed: January 29, 2009

Before DALE M. SHAW, *Chief Appeals Administrator*
SHAW, *Deputy Chief Appeals Administrator*.

ORDER REMANDING TO EXAMINER

On July 24, 2008, this application was electronically received by the Board of Patent Appeals and Interferences (hereinafter the "Board"). On September 9, 2008, this application was assigned Appeal Number 2008-5593 and a Docketing Notice was mailed on September 10, 2008. However, a review of the application reveals that the Reply Brief filed on January 14, 2008 includes new evidence.

In accordance with 37 CFR 41.41(a)(2):

“A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence...”

Because the reply brief filed January 14, 2008 was accompanied by an amendment, affidavit or other evidence, it will be treated as a request that prosecution be reopened before the examiner. Moreover, according to 37 C.F.R. § 41.50(2)(ii):

If such a reply brief is accompanied by an amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the examiner under paragraph (a)(2)(i) of this section.

See also MPEP §1208 for details.

CONCLUSION

Accordingly, it is

ORDERED that this application be returned to the Examiner to:

- (1) re-open prosecution to address the new evidence presented in Appellants' Reply Brief filed on January 14, 2008, and
- (2) for such further action as may be appropriate.

If there are any questions pertaining to this Remand, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/clj

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